

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

(S4) 23-Cr-490 (SHS)

-v-

: ORDER

ROBERT MENENDEZ, NADINE MENENDEZ, :
Wael Hana, and Fred Daibes, :

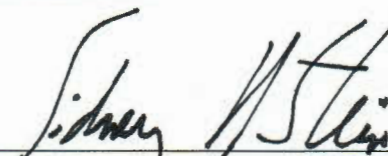
Defendants.
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SIDNEY H. STEIN, U.S. District Judge.

Robert Menendez has moved to compel the government to collect and produce a recusal memorandum and related correspondence. (ECF No. 229.) Contrary to Menendez's assertion, the indictment does not reference any such memorandum; it only refers to "information that Official-3 provided to the U.S. Department of Justice to determine whether a recusal was warranted." (ECF No. 238 ¶ 53.) The documents, if they exist, are not in the possession of the U.S. Attorney's Office for the Southern District of New York. "A prosecutor's constructive knowledge only extends to those individuals who [or entities that] are an arm of the prosecutor or part of the prosecution team." *United States v. Avenatti*, No. 19-CR-374, 2022 U.S. Dist. LEXIS 28472, at *29 (S.D.N.Y. Feb. 15, 2022) (internal quotation marks omitted). There was no joint investigation here with EOUSA and the materials sought are therefore outside the possession of the prosecution team. *See id.* at *31-36; *United States v. Ingarfield*, No. 20-CR-146, 2023 U.S. Dist. LEXIS 73685 (S.D.N.Y. Apr. 27, 2023). "[T]he imposition of an unlimited duty on a prosecutor to inquire of other offices not working with the prosecutor's office on the case in question would inappropriately require us to adopt a monolithic view of government that would condemn the prosecution of criminal cases to a state of paralysis." *United States v. Avellino*, 136 F.3d 249, 255 (2d Cir. 1998) (internal quotation marks omitted). Defendant's motion is denied.

Dated: New York, New York
March 18, 2024

SO ORDERED:



Sidney H. Stein, U.S.D.J.